

# STATE OF COLORADO

## STATE PERSONNEL BOARD Meeting Minutes



September 17, 2002

The State Personnel Board met in public session on Tuesday, September 17, 2002, at the Colorado Department of Transportation, 5640 East Atlantic Place, Region 6 Large Maintenance Room, Denver, Colorado 80222.

The meeting was called to order by Board Chair Joyce Lottner at approximately 9:00 a.m. In addition to Ms. Lottner, the following Board members were present: Elizabeth Salkind, Linda Siderius, and John Zakhem. Diedra Garcia was absent.

Stacy L. Worthington, Board Director; Assistant Attorney General Pam Sanchez, Board Counsel; and Jane Sprague, Legal Assistant, were also present.

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### **I. REQUESTS FOR RESIDENCY WAIVERS**

- A. September 1, 2002 Report on Residency Waivers.

### **II. PENDING MATTERS**

- A. Department of Agriculture Letter re Retention Areas.
- B. Department of Personnel and Administration Letter re Retention Areas.

Following a discussion of the draft Technical Assistance - Retention Area Requests and suggestions for its revision, Mr. Zakhem moved to table consideration of the above-referenced matters, A and B, to the next meeting when the Department of Agriculture and the Department of Personnel and Administration may brief the Board concerning factors relevant to their requests. In addition, the Director was directed to make the revisions to the Technical Assistance - Retention Area Requests, circulate the guidelines as revised, and post them on the website with the other technical assistance guidelines. Ms. Siderius seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind, Ms. Siderius, Mr. Zakhem, and Ms. Lottner. Ms. Garcia was absent.

- C. Eileen Rodgers v. Department of Regulatory Agencies, Board of Nursing,

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State Personnel Board case number 2001B106.

Director Worthington recused herself from participation in the discussion of this case. Legal Assistant Sprague called the case number and the vote in lieu of the Director.

Mr. Zakhem moved to affirm the award of attorney fees and costs by the Administrative Law Judge as a final agency action. Ms. Siderius seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind, Ms. Siderius, Mr. Zakhem, and Ms. Lottner. Ms. Garcia was absent.

- D. Sara Shipley v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2001G029.

Following consideration of the parties' briefs and responses to requests for additional information regarding the jurisdiction of the Board, Ms. Siderius moved to reject the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Siderius, Mr. Zakhem, and Ms. Lottner. Ms. Salkind voted in opposition to the motion. Ms. Garcia was absent.

### **III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD**

- A. John R. Martin v. Department of Corrections, Sterling Correctional Facility, State Personnel Board case number 2002B063.

Mr. Zakhem moved to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to adopt the Initial Decision. Ms. Siderius seconded the motion. The motion passed on the

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affirmative vote of the following Board members: Ms. Salkind, Ms. Siderius, Mr. Zakhem, and Ms. Lottner. Ms. Garcia was absent.

Director Worthington recused herself from participation in the discussion of the next two cases. Legal Assistant Sprague called the case numbers and the votes in lieu of the Director.

- B. Irvin Lee Hendrix v. Department of Corrections, Volunteer Services Administration, State Personnel Board case number 2002G091.

Ms. Siderius moved to adopt the Dismissal Order. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind, Ms. Siderius, Mr. Zakhem, and Ms. Lottner. Ms. Garcia was absent.

- C. Steven Dean Pontius v. Department of Corrections, San Carlos Correctional Facility, State Personnel Board case number 2001B090.

After a discussion regarding briefing before the Board, Mr. Zakhem moved to grant Respondent's Motion to Dismiss. Ms. Siderius seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind, Ms. Siderius, Mr. Zakhem, and Ms. Lottner. Ms. Garcia was absent.

#### **IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING**

There were no Preliminary Recommendations of Administrative Law Judges or the Director before the Board this month.

#### **V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES**

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- A. Robert E. Hagggar v. Department of Corrections, State Personnel Board case number 2002B130.

On September 5, 2002, the Initial Decision of the Administrative Law Judge was issued. The ALJ found that Respondent's disciplinary termination of Complainant was not arbitrary, capricious or contrary to rule or law. The ALJ ordered that Respondent's action is affirmed and Complainant's appeal is dismissed with prejudice.

## **VI. REVIEW OF THE MINUTES FROM THE AUGUST 20, 2002 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

Ms. Siderius moved to approve the minutes of the August 20, 2002 meeting as submitted. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind, Ms. Siderius, Mr. Zakhem, and Ms. Lottner. Ms. Garcia was absent.

## **VII. ACKNOWLEDGMENTS**

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS AUGUST 20, 2002 PUBLIC MEETING:

- A. Department of Agriculture Letter re Retention Areas.

The Board voted to table consideration of the above-referenced matter to the next meeting, when all interested parties will brief the Board concerning suggested guidelines for requests to limit retention areas. It was agreed that the guidelines are to be drafted by the Board counsel and Director with input from interested agencies, employees, and employee associations in order to determine applicable factors.

- B. Petition for Declaratory Order of Thomas Kautzky, State Personnel Board case number 2003D001.

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The Board voted to deny the petition for declaratory order.

- C. Donna Hubbard v. Department of Higher Education, University of Northern Colorado, State Personnel Board case number 2002B016.

After a discussion of progressive discipline and the grounds for an award of attorney fees, the Board voted to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge, to adopt the Initial Decision, and to remand the matter to the Administrative Law Judge for a determination of the amount of fees and costs to be awarded to Complainant.

- D. Anthony Guara v. Department of Human Services, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2002B052.

The Board voted to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge, but to reverse the Administrative Law Judge on both of the conclusions of law. In upholding Respondent's termination of Complainant, the Board held that Respondent's action of terminating Complainant's employment was not arbitrary, capricious or contrary to rule or law, and the discipline imposed was within the range of available alternatives.

- E. Joan M. George v. Department of Revenue, Hearing Section, Enforcement Group, State Personnel Board case number 2002B035.

The Board voted to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to adopt the Initial Decision.

- F. Michael Rura v. Department of Higher Education, State Board of Agriculture, Colorado State University, State Personnel Board case number 2001G117.

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After a discussion of notification requirements as required by the Colorado State Employee Protection ("Whistleblower") Act, the Board voted to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge, to adopt the Initial Decision, to remand the matter to the Administrative Law Judge for a determination of the amount of fees and costs to be awarded to Complainant, and to report the Board's finding of a violation of the Act, as required by statute.

- G. Alain P. Rigaud v. Department of Corrections, Correctional Industries, State Personnel Board case number 2002B050.

The Board voted to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to adopt the Initial Decision.

- H. Gloria Romero v. Department of Human Services, Southern District Management, Housekeeping Department, State Personnel Board case number 2002G111

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- I. Elaine Lanphier v. Department of Public Health and Environment, Laboratory and Radiation Services, State Personnel Board case number 2002B111.

The Board voted to adopt the Preliminary Recommendation of the Director and deny the petition for hearing.

## VIII. REPORT OF THE STATE PERSONNEL DIRECTOR

Ken Allikian, Manager, Human Resource Programs, reported on several matters, beginning with the increase in health insurance premiums for state employees. A second newsletter regarding health insurance has been sent, outlining the rate

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structure of premiums without any additional state contribution to those premiums. When asked if the legislature would be "visited," Mr. Allikian responded that a three-pronged plan of attack would be initiated, including imposing a \$10.00 per month surcharge to build up a self-insurance fund, requesting that the legislature approve an increase in the employer contribution to health insurance, and possibly rewriting the statute to address total compensation.

Regarding upcoming events, on September 20, 2002, Troy Eid will conduct a town meeting in Fort Collins and another one in Durango on September 27, 2002. On October 2, 2002, a forum on pay for performance will be held as a post-assessment for the program to determine what works and what does not work. On October 3, 2002, a fall conference and workshop is scheduled for state managers and HRS, entitled "When Things Get Tough." Finally, on October 4, 2002, the annual conference for risk managers will be held.

### **IX. ADMINISTRATIVE MATTERS & COMMENTS**

#### **A. ADMINISTRATIVE MATTERS**

- Budget Reports and Revenue and Expense Report
- FY 02 Annual Report of Cases Under the State Employee Protection (Whistleblower) Act
- Cases Scheduled for Preliminary Review
- Cases on Appeal to the Board and to Appellate Courts
- Announcement of CLE scheduled for October 10, 2002
- Mandate; Sharp v. Department of Transportation, State Personnel Board Case No. 2001B074, Court of Appeals No. 02CA714

The Director reported on revenue projections for the state, as explicated in several news articles, and noted that a recent study showed that Colorado was last in job growth. In the kudos category, former Director G. Charles Robertson will be the recipient of a Quality and Accountability in Government award from the Colorado Federation of Public Employees on September 28,

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2002. Nancy Hopf, an Administrative Law Judge at the Division of Administrative Hearings, has been appointed to the 18th Judicial District.

In other matters, the Director reported that the order for the Rura case, the matter concerning violations of the Whistleblower Act, has been issued, with copies of the Initial Decision and Board Order distributed to the governor, the Department of Personnel and Administration, and the auditor, pursuant to the notification requirements of the statute. Also, a letter has been transmitted to the Assistant Attorney General regarding the disciplinary action to be imposed pursuant to the Initial Decision and Board Order.

Regarding issues of Senior Executive Service, there will be a presentation at the next Board meeting and rule-making in December to clarify this issue.

Finally, the Board is in receipt of a letter dated August 16, 2002, from the Transportation Commission regarding the qualifications of a director, a copy of which was provided to each Board member.

- B. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

### **X. EXECUTIVE SESSION**

- A. Case Status Report
- B. Minutes of the August 2002 Executive Session



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Having no more business, the meeting adjourned by consensus.

**APPROVED THIS 15th DAY OF OCTOBER, 2002.**

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Joyce Lottner, Chair

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John Zakhem, Vice Chair

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Elizabeth Salkind, Member

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Linda Siderius, Member